

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1905 (PCB SA 03-30) Public Records and Meetings/Professional Liability Insurance Facility  
**SPONSOR(S):** State Administration  
**TIED BILLS:** HB 1713 **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill creates a public records exemption for the Health Care Professional Liability Insurance Facility. The following records and information held by the facility are confidential and exempt from public disclosure: underwriting files; claims files; records obtained or generated by an internal auditor pursuant to a routine audit; proprietary information licensed to the facility under contract, but only when the contract provides for the confidentiality of such information; employee assistance program records; information relating to negotiations for financing, reinsurance, or contractual services; and minutes of closed meetings regarding confidential and exempt underwriting files or confidential and exempt claims files. It also creates a public meetings exemption for portions of facility meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed. The closed meetings must be recorded by a court reporter.

This bill provides for future review and repeal of the exemptions and provides a statement of public necessity.

This bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

HB 1713, 1<sup>st</sup> Engrossed by the Committee on Health Care and Representative Bullard, creates the Health Care Professional Liability Insurance Facility (facility). The facility will have the necessary powers to operate as an insurer, and is subject to regulation by the Office of Insurance Regulation of the Financial Services Commission. No later than January 1, 2004, it will provide liability insurance coverage for health care professionals.<sup>1</sup>

##### Effect of Bill

This bill creates a public records exemption for the Health Care Professional Liability Insurance Facility. The following records and information held by the facility are confidential and exempt<sup>2</sup> from public disclosure:

- Underwriting files;<sup>3</sup>
- Claims files;<sup>4</sup>
- Records obtained or generated by an internal auditor pursuant to a routine audit;<sup>5</sup>
- Proprietary information licensed to the facility under contract, but only when the contract provides for the confidentiality of such information;
- Employee assistance program records;
- Information relating to negotiations for financing, reinsurance, or contractual services; and
- Minutes of closed meetings regarding confidential and exempt underwriting files or confidential and exempt claims files.

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<sup>1</sup> Section 22 of HB 1713, 1<sup>st</sup> Engrossed by the Committee on Health Care and Representative Bullard.

<sup>2</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>3</sup> An applicant or policyholder is allowed access to his or her own underwriting file.

<sup>4</sup> Once litigation has terminated or all claims arising out of the same incident have been settled, then the claims file is available for public inspection.

<sup>5</sup> Such records are available once the audit is completed or once the investigation is closed or ceases to be active.

This bill also creates a public meetings exemption for portions of facility meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed. The closed meetings must be recorded by a court reporter. The court reporter must record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking.

This bill provides for future review and repeal of the exemptions and provides a statement of public necessity.

**C. SECTION DIRECTORY:**

Section 1. Creates s. 627.3576, F.S., creating a public records and public meetings exemption for the Health Care Professional Liability Insurance Facility.

Section 2. Provides for future review and repeal.

Section 3. Provides a statement of public necessity.

Section 4. Provides that this bill will take effect July 1, 2003, if HB 1713 or similar legislation is adopted during the same legislative session or an extension thereof and becomes law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.

2. Expenditures: None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

**B. RULE-MAKING AUTHORITY: None.**

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Public Records and Public Meetings Laws**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995<sup>6</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>6</sup> Section 119.15, F.S.